Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	

REPLY COMMENTS OF CABLEVISION LIGHTPATH, INC.

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Cablevision Lightpath, Inc. ("Lightpath") hereby files its reply comments in response to the Federal Communications Commission's ("Commission's") April 27, 2001 Notice of Proposed Rulemaking in the above-captioned proceeding.[1/] The objective of this proceeding to review and reform existing intercarrier compensation mechanisms in a comprehensive manner is critical for the continued development of facilities-based local telephone competition. To ensure that full service, facilities-based competitive local exchange carriers ("CLECs") like Lightpath are able to invest in the network and infrastructure necessary to provide consumers with a viable and valuable alternative to the services provided by entrenched incumbent carriers, the pro-competitive focus of the Commission's current compensation regime must be maintained. Two of the Commission's policies are particularly important to facilities-based competition.

1) Carriers should be compensated for the use of their network by other carriers, and
2) Competitive carriers should be allowed to exploit technological advances in networking to bring the benefits of new, efficient networks to consumers.

The reversal of such pro-competitive policies would jeopardize continued investment by CLECs by imposing unnecessary and burdensome regulatory requirements and uncompensated network usage.

I. INTRODUCTION AND SUMMARY

Predictably, competition in the telecommunications marketplace has developed unevenly across the nation since the passage of the Telecommunications Act of 1996 ("1996 Act"). A significant impact on the level of competition is the regulatory framework in a particular jurisdiction. New entrants have built switched and Internet protocol networks that are technologically advanced and efficient, both packet and circuit based, and offer consumers choices of services as well as providers. Packet switching, Internet telephony, and Voice over IP – still in their nascent stages – promise to revolutionize telecommunications in ways that no one can confidently predict. It is appropriate that the Commission is now focusing its efforts on establishing an updated compensation model that will build upon the pro-competitive results achieved by its current compensation scheme -- efficiency, innovation, and investment -- and reduce the opportunity and incentive for regulatory arbitrage. However, to the extent that carriers are investing substantial sums in network infrastructure, there are two principles that remain relevant and necessary for a competitive market – compensation for use of the network and flexibility to implement an efficient architecture. The 1996 Act encouraged this type of innovation, and so has the Commission in its policies.

Based on its experience in the market, Lightpath submits these comments to reinforce the need to carefully assess the potential for any proposed policies to foster facilities-based competition and to avoid those that would jeopardize competition or consumer benefits from CLEC innovations, such as broader local calling areas, bundled services, and customized calling plans that meet consumer needs at lower prices. CLECs will not be able to provide such benefits

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1/ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132, 16 FCC Rcd 9610 (rel. Apr. 27, 2001) ("NPRM").

if the ILECs prevail in their efforts to require CLECs to duplicate their legacy networks. In addition, the Commission's policy regarding single interconnection points should be retained, and ILEC proposals that would shift the costs of their facilities to new competitors by requiring CLECs to build a network that mirrors the ILEC network should be rejected.

Similarly, ILEC attempts to thwart service offerings that differentiate competitors' products should be rejected. For instance, the lawfulness, and sound policy that support the ability of CLECs to provision virtual foreign exchange ("virtual FX") service should be reconfirmed. Contrary to the ILEC charges, this service advances the Commission's goal of increasing competition in the local exchange market and serves the needs of consumers in remote locations.

Lastly, the policy that ensures carriers are paid for the network services they provide to other carriers has been a fundamental principle of regulatory policy at the state and federal level. Indeed, ILECs have consistently argued -- and regulators have generally agreed -- that use of incumbent facilities should not go uncompensated. The regulatory backstop provided by this policy has been a critical element in CLECs' decisions to undertake the risky venture of investing in capital-intensive networks to provide true competitive choice – a focus of the 1996 Act and underscored recently in statements by Chairman Powell and Commissioner Martin regarding the importance of facilities-based competition.

The key question posed in this proceeding is how carriers will compensate each other for the use of their networks. Whatever the ultimate answer, the impact will undoubtedly be decisive to the continued development of competitive telecommunications services.

II. CLECS SHOULD NOT BE PENALIZED FOR IMPLEMENTING EFFICIENT, INNOVATIVE NETWORKS.

As previously described, the Commission's "ultimate goal" in implementing the common carrier provisions of the 1996 Act is to encourage the establishment of facilities-based competition in the local exchange market.[2/] To achieve that objective, the Commission must ensure that the pro-competitive incentives and protections that have fostered such competitive growth under the Commission's current rules are at the center of any new system it adopts. Nothing has changed in the intervening years that would warrant abandonment of these fair and reasonable interconnection and compensation policies. Indeed, as Chairman Powell recently noted, such rules are vital to the protection of competitive carriers from anticompetitive incumbent behavior and essential to the creation of the incentives necessary to encourage investment by competitive carriers in facilities-based competition.[3/]

A. The Commission's Long-Standing "Single Interconnection Point" Rule Has Resulted in Efficient Network Interconnection and Significant CLEC Investment.

Among the most important of the Commission's tools used to foster a competitive local exchange market is the "single interconnection point" rule. To even somewhat the bargaining positions of carriers and allow the benefits of efficient network design to be realized, the Commission granted CLECs not only the right to interconnect with incumbent carriers, but the right to choose the location and number of interconnection points.[4/] Specifically, the single

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2/ *See* "Digital Broadband Migration: Part II," Speech of Michael K. Powell, Chairman of the Federal Communications Commission (Oct. 23, 2001).

3/ *Id.* (asserting that rules relating to interconnection should provide incentives for investment in facilities and should be "rigorously enforced.").

4/ *See NPRM* ¶ 112; *see also Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern* interconnection point rule confers upon CLECs the right to "interconnect at any technically feasible point [on an ILEC's network], including the option to interconnect at a single POI per LATA."[5/]

By allowing new entrants to select the "most efficient points at which to exchange traffic with incumbent LECs,"[6/] the single interconnection point rule encourages precisely the kind of investment that is necessary to the development of the facilities-based competition sought by the Commission. The rule relieves competitive carriers of the obligation of "transport[ing] traffic to less convenient or efficient connection points" chosen by incumbents.[7/] This far-sighted rule has encouraged the construction of fiber-rings, SONET networks, ATM fiber loops, and other innovative infrastructure, and permits these networks to interconnect efficiently with the ILECs' existing hierarchical networks without duplicating them. Instead of being forced to bear the unnecessary and unproductive expense of replicating the incumbent networks, as incumbent carriers demand, the single interconnection point rule allows competitive carriers to take full advantage of the efficiencies of their superior networks, thereby rewarding (and encouraging) innovation and efficiency. For Lightpath, this is critical to allow the economics to keep pace

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Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, *Memorandum Opinion and Order*, FCC 00-238, 15 FCC Rcd 18354 ¶ 78 (rel. June 30, 2000) ("*SBC Order*") ("Section 251, and [the Commission's] implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.").

5/ *See NPRM* ¶ 112; *SBC Order*, 15 FCC Rcd 18354 ¶ 78 (citing *Local Competition First Report and Order,* 11 FCC Rcd 15499 ¶ 172).

6/ *SBC Order*, 15 FCC Rcd 18354 ¶ 78 (citing *Local Competition First Report and Order,* 11 FCC Rcd 15499 ¶ 172).

7/ *SBC Order*, 15 FCC Rcd 18354 ¶ 78, n.173 (citing *Local Competition First Report and Order*, 11 FCC Rcd 15499 ¶ 209).

with the capital outlay required for further network growth.

In a testament to the past and continued success of the single interconnection point rule in furthering the Commission's pro-competitive goals, incumbents propose yet another version of their oft-rejected "geographically relevant interconnection points" ("GRIPs") plan.[8/] If adopted, this revised -- yet functionally identical -- GRIPs proposal would require competitive carriers to

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8/ *See, e.g., MCI v. Bell Atlantic - Pennsylvania,* No. 1:CV-97-1857, Slip Opinion at 14 (M.D. Pa. 2000) (reversing a decision by the Pennsylvania Public Utility Commission specifying multiple points of interconnection and recognizing a competitive carrier's right to interconnect at a single technically feasible point of interconnection); *Petition of Media One, Inc. and New England Telephone and Telegraph for Arbitration*, DTE Nos. 99-42, 99-43, 99-52, at 25 (Mass. D.T.E. Aug. 25, 1999) ("[N]either the Act nor the FCC's rules require[es] any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent's preference for a geographically relevant interconnection point . . . a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple ILEC tandems and end offices. There is no requirement or even preference under federal law that a CLEC replicate or in a lesser way mirror an ILEC's network. Indeed, the Act created a preference for CLECs to design and engineer in the most efficient way possible, which Congress envisioned could be markedly different than the ILECs' networks."); *U.S. West v. Garvey*, Civ. No. 97-913, 1999 U.S. Dist. LEXIS 22042 (D. Minn. Mar. 31, 1999) (rejecting incumbent's claim that a competitive carrier must establish an IP in each incumbent local calling area); *U.S. West Communications, Inc., v. Arizona Corporation Commission,* 46 F. Supp. 2d 1004, 1021 (D. Ariz. 1999) ("The court also rejects U.S. West's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture that U.S. West."); *MCI v. U.S. West*, No. C97-1508R, 1998 U.S. Dist. LEXIS 21585 (W.D. Wa. July 21, 1998) (rejecting incumbent's claim that a competitive carrier must establish an IP in each incumbent local calling area); *U.S. West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al,* No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998) (U.S. West's contention that the "Act requires a CLEC to have a POI in each local calling area in which the CLEC offers local service" is "wrong"); *U.S. West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.,* 31 F. Supp. 2d 839, 852 at *34 (D. Or. 1998)("Although the court agrees with U.S. West that the Act does not define the minimum number of interconnection points, the court also rejects U.S. West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective competitors."), *reversed in part, vacated in part on other grounds by U.S. West Communications, Inc. v. Hamilton*, 224 F.3d 1049 (9th Cir. 2000), *as amended on rehearing* (Sept. 13, 2000).

establish multiple points of interconnection at locations dictated by the incumbents. Although the ILEC proposals are now couched in terms of "compensat[ion] for the additional cost of transporting traffic beyond the [ILEC's] local exchange area,"[9/] the result would be the same; either a CLEC must physically exchange traffic at thousands of ILEC end offices, or pay for the ILEC facilities used to transport the traffic to and from those offices. In other words, CLECs would have to pay incumbents if they want to exercise their right to interconnect at a single interconnection point of their own choosing. Such a result would be entirely inconsistent both with the clear language of the Commission's interconnection and reciprocal compensation rules as well as with the pro-competitive policies underlying those rules.

The Commission's reciprocal compensation rules contemplate no distinction between a physical and financial point of interconnection and, in fact, define carriers' compensation obligations with explicit reference to the point at which the carriers physically interconnect.[10/] The Commission has expressly concluded that carriers are responsible for traffic on their side of the interconnection point and, moreover, that its rules prohibit carriers from charging interconnecting carriers for originating traffic.[11/] Accordingly, the Commission's rules as they

9/ *See* Comments of SBC Communications, Inc. at 18.

10/ *See* 47 C.F.R. §§ 51.701(c), (d), (e); 47 C.F.R. § 51.703(a).

11/ *See Joint Application by SBC Communications, Inc. et al., for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, *Memorandum Order and Opinion*, FCC 01-29, 16 FCC Rcd 6237, ¶¶ 233-235 (re. Jan. 22 2001) (noting that the adoption of the single interconnection point rule did not "change an incumbent [LEC's] obligations under [the Commission's] current rules . . . [which] preclude an incumbent LEC from charging carriers for [reciprocal compensation] traffic that originates on the incumbent LEC's network . . . [and] require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier") (specifically citing 47 C.F.R. §§ 51.701(c), (d), (e) and generally citing 47 C.F.R. §§ 51.701, *et seq.*); *TSR Wireless, LLC v. U.S. WEST Comm., Inc.*, *Memorandum Opinion and Order,* 15 FCC Rcd 11166 ¶ 34 (rel. June 21, 2000) ("The *Local Competition Order* requires a carrier to pay the cost of facilities used currently exist bar ILECs from charging CLECs for the transport of ILECs' originating traffic. Nor should those rules be changed so that incumbents can accomplish indirectly what they have thus far been barred from doing directly -- undermining the single point of interconnection rule and thwarting competition by requiring CLECs to overlay legacy incumbent networks or bear severe financial penalties.

The absurdity of the incumbents' scheme is illustrated in Northern New Jersey, where Lightpath has installed an extensive fiber-based telecommunications network to serve the entire 224 LATA. Using a single, multifunction switch, Lightpath's Northern New Jersey network serves a geographic area equivalent to three Verizon tandems and more than 100 Verizon end offices. Traffic between the networks is efficiently exchanged at a single interconnection point, and consumers on both networks are well served.[12/] The ILECs' GRIPs requirement would force Lightpath to establish new interconnection points in each local calling area where Lightpath is fortunate to win a new customer. Thus, under Verizon's proposal, even if Lightpath had only one new customer in each Verizon-defined local calling area, it would be required to establish up to 139 new interconnection points to ensure that its customers can receive calls from Verizon's

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to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation"), *aff'd by Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). *Compare Application of Verizon Pennsylvania Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania,* CC Docket No. 01-138, *Memorandum Opinion and Order*, FCC 01-269, 66 Fed. Reg. 49, 188 (September 26, 2001) n.343, 345 (rel. Sept. 19, 2001).

[12/] Lightpath has elected to interconnect at more than one point on Verizon's network in the past to achieve diverse routing and a more robust network. Such election, however, should be made by the CLEC, not dictated by the ILEC. In Lightpath's situation, it is tied to the economic threshold under which an additional interconnection point is justified by the business model. In contrast, pursuant to Verizon's proposal, the decision of whether and when to build new routes into Lightpath's network would be made by Verizon, and could be insisted upon when Lightpath signs its first customer in any local calling area.

customers. With collocation costs approximating $40,000 per cage, and end office trunking costs that exceed $600 per month at a minimum, complying with the ILECs' "modest proposal" would cost Lightpath more than $5,000,000 to establish and more than $1,000,000 a year to sustain. Predicated on the notion that the ILEC network topology is *the* network topology, adoption of GRIPs would force new carriers to replicate ILEC networks, to match the scale and scope of the incumbent, and – as a result – abruptly end investment in local telecommunications competition.

The ILECs' "V-GRIPs" proposal – Virtual Geographically Relevant Interconnection Points – would have the same effect. Rather than compel new entrants to meet at each calling area to receive traffic, V-GRIPs would have Verizon provide the "service" of outbound transport on its own network to the existing carrier interconnection point. This mandatory "service," which flies in the face of regulations forbidding carriers from charging other carriers for the transport of traffic originating on their own networks, would result in a perverse compensation environment: ILECs would *receive* reciprocal compensation payments for *terminating* traffic on their networks, *and* ILECs would *receive* V-GRIPs compensation for *originating* traffic on their networks. It goes without saying that this compensation scheme would admit of no viable, competitive business model. Rather, V-GRIPs should be seen for what it is -- a "competition penalty" levied upon any telecommunications provider that builds a network that fails to match the scale and scope of the ILECs' publicly funded monopoly, and will (as the ILECs surely know) serve as an effective bulwark against further investment by competitors.

The incumbents' proposals – GRIPs and V-GRIPs – are commercially unsound and would never serve as a basis for exchanging traffic in a marketplace that is undistorted by the dominance of the ILECs. Significantly, the structure of agreements reached by interconnecting *incumbents* demonstrates that the environment fostered by the single interconnection point rule far more closely resembles what would occur in a competitive market than would that created by the ILECs' proposals. As Global Crossing correctly points out, agreements between interconnecting incumbents -- who have roughly equal bargaining power -- typically require few interconnection points, which generally occur high up in the network.[13/] The ILECs' current proposals, in contrast, like their past demands, are designed to require competitors that lack bargaining power to subsidize the incumbents' networks. Although conveniently ignored by the incumbents, the fact is that CLECs already have to bear the costs of building their *own* facilities and transporting traffic to and from their *own* customers. Requiring CLECs also to pay for the transport of *incumbents'* traffic on both sides of the interconnection point would be patently unfair and anticompetitive.

The Commission's far-sighted, existing scheme invites much greater innovation and flexibility in the design, implementation, and investment in new networks than the incumbents' backward-looking proposals. Adoption of the Commission's balanced system was prompted by the undeniable potential for incumbents to impose burdensome interconnection requirements upon their competitors to protect their overwhelming market dominance. This concern still applies with full force today. Incumbents continue to control access to the vast majority of local exchange market customers, and competitive carriers cannot compete unless ILECs are required to abide by reasonable and enforceable interconnection rules.

B. The Tandem Rate Rule Must Be Sustained Against ILEC Proposals That Would Undermine Its Effectiveness

Similar to their efforts to undercut the effectiveness of the single interconnection point

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13/ *See* Comments of Global Crossing, Ltd. at 11-12.

rule, the ILECs have continually sought to deny CLECs the benefits of the Commission's decision to impose "symmetrical" rates on interconnecting parties.[14/] As a result of incumbent lobbying at the state level, several states have mistakenly incorporated a "functional equivalency" test into their interpretation of the "tandem interconnection rate" rule.[15/] Application of the ILECs' preferred functional equivalency test could deny higher rates of compensation to any carriers that employ switches that have *greater* capabilities than today's ILEC tandems. Under this criterion, the ILECs would have the Commission deny tandem reciprocal compensation rates to carriers whose switches perform both tandem and dial-tone functions, again effectively levying a "competition penalty" upon carriers who install facilities with the flexibility and functionality to serve both today's and tomorrow's evolving telecommunications markets. It is especially ironic that ILECs would seek to treat such multifunction switches as functionally *in*equivalent to their tandems, as prevailing industry practice among the ILECs themselves is to replace existing tandems with multifunction switches already in use by the CLECs.

Although Lightpath has no objection to the adoption of such a functional equivalency test to the extent that it mirrors the "comparable geographic area" test set forth by the Commission's rules and reaffirmed in the NPRM, it strongly opposes any modification of the current rules that would result in the creation of disparate "functional equivalency" tests and thereby increase the burdens that CLECs must satisfy in order to obtain the tandem rate. Reducing the ability of CLECs to recoup their network investments by obtaining fair compensation from incumbents for the use of those networks would severely dampen, if not extinguish, CLECs' incentives to

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14/ *See* 47 C.F.R. § 51.711(a).

deploy their own facilities.

Adopting policies that force CLECs to pick up the costs of internal ILEC facilities and deny them the same compensation received by ILECs for providing the same or superior interconnection services not only would be unfair, inefficient, and anti-consumer, it would effectively serve the agenda of those proponents' policies: it would jeopardize wide scale competition for local services by new entrants.

III. VIRTUAL FX SERVICE IS LAWFUL AND IN THE PUBLIC INTEREST.

Virtual FX service is one of many new and innovative services that competitive carriers have developed to satisfy consumer needs and to compete effectively in the local exchange market. This service, like other increasingly popular technologies such as mobile phones and pagers, eliminates the artificial geographic boundaries that limit consumers' ability to use telecommunications services in a manner that meets their personal or business needs. Virtual FX service is, in fact, a precursor of a communications environment in which geographically-based restrictions will fall by the wayside as the incumbents' obsolete networks and business plans are rejected in favor of more advanced networks and innovative business strategies. If, as the Commission surmises in the *NPRM*, the nature and pricing of services will increasingly depend upon consumer needs rather than the geographic location of the service's users, then service offerings by competitors that divorce rates from geography will increasingly be adopted and demanded. Thus, far from constituting some kind of "fraud," as Verizon asserts,[16/] virtual FX service is precisely the type of service that consumers demand and that the Commission should

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15/ *See NPRM* n.173.

16/ *See* Comments of Verizon at 4-5.

encourage.[17/]

Verizon's claims of fraud and abuse are particularly galling in light of the Commission's recent rejection in the *ISP Intercarrier Compensation Order* of the characterization of traffic as local or nonlocal as an acceptable criterion by which to determine reciprocal compensation obligations.[18/] Acknowledging that the term "local" was confusing and difficult to apply, the Commission concluded that all traffic terminated and transported on a carrier's network that was not originated by that carrier will trigger reciprocal compensation obligations unless it falls within one of the categories of traffic exempted from such obligations pursuant to 47 U.S.C. § 251(g).[19/] Accordingly, as discussed more fully in Lightpath's initial comments, virtual FX traffic that originates on one network and terminates on another is subject to reciprocal compensation regardless of whether it is characterized as local or nonlocal because it does not fall within the section 251(g) exceptions. The irrelevance of the local/nonlocal nature of traffic to the determination of reciprocal compensation obligations fatally undercuts Verizon's and other incumbents' arguments that a CLEC's virtual FX service constitutes an illicit attempt to obtain undeserved reciprocal compensation payments.

Moreover, even if the local/nonlocal distinction remains applicable, virtual FX traffic would qualify as local traffic subject to reciprocal compensation because the determining factor

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17/ Indeed, a particularly appealing aspect of this service is that it allows the called and calling parties to split the cost of the phone call between themselves in an economically efficient manner, satisfying the Commission's interest in ensuring that its compensation rules reflect that, generally, both the calling and called parties (rather than just the calling party) benefit from calls.

18/ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 ¶¶ 34, 46, 54 (2001).

19/ *See id.*

in whether a call is local has traditionally been whether the NXX codes of the originating and terminating users are rated out of the same local office, not whether the originating and terminating users actually are located physically within the same ILEC-defined local calling area. Competitive carriers must be allowed to define their own local calling areas in order to provide the differentiated services necessary to compete with incumbents.[20/] They cannot do so effectively if they are required to mirror the incumbents' regulatory structure.[21/]

Verizon's fraud complaints are even less credible in light of the fact that ILECs offer a virtually identical service to their customers called foreign exchange service. Just as virtual FX service does, the incumbents' foreign exchange service treats a call from a customer on the incumbent's network to another party physically located in a different local calling area as local. Nor is there any truth to the incumbents' claims that virtual FX service unfairly increases their costs by requiring them to transport traffic outside of their local calling areas without compensation. In fact, ILEC originating costs are the same regardless of the ultimate destination – or virtual destination – of a local call. With or without virtual FX service, incumbents generally transport their originating traffic to exactly the same interconnection point with the

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20/ *See, e.g.*, *DPUC Investigation Into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network - Reopened*, Docket No. 94-10-02, Decision at 69 (CT D.P.U.C. Jan. 17, 1996).

21/ In light of the public interest benefits of permitting CLECs to differentiate their services and networks, states have repeatedly upheld CLECs' right to provide virtual FX service. *See, e.g.*, Docket No. P-474, Sub.10, *MCImetro Access Transmission Services, LLC*, 2001 WL 1117701 (N.C.U.C. Aug. 2, 2001); *Application of Ameritech Michigan To Revise Its Reciprocal Compensation Rates and Rate Structure and To Exempt Foreign Exchange Service from Payment of Reciprocal Compensation*, Case No. U-12696, Opinion and Order, 2001 Mich. PSC LEXIS 58 (MI P.S.C. Jan. 23, 2001); *Petition of Level 3 Communications, LLC for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Case No. 2000-404, Order at 7 (KY P.S.C. Mar. 14, 2001).

competitive carrier. It is the terminating carrier that bears any additional expense associated with transporting the call throughout its own network to the customer.

Consistent with their general practice, Verizon and other incumbents seek to tie competitive carriers' business plans and customer services to local calling areas defined by the ILECs and the ILEC legacy technology. If their position regarding virtual FX is adopted, competitive carriers effectively would be denied the ability to take advantage of the benefits of their more advanced networks and to develop the type of unique services necessary to differentiate themselves from the incumbents. While the incumbents' desire to handicap new entrants by subjecting them to less favorable and burdensome regulation is understandable, it does not constitute a basis for reasoned decisionmaking. As the incumbents know well, robust competition cannot thrive under such circumstances.

IV. CONCLUSION

It is critical for the survival and growth of facilities-based competition that the rules that result from this proceeding continue the Commission's demonstrably successful historical practices that prevent artificial disincentives to competitive investment. The ILECs' proposals would create such disincentives, and would reverse competitive advances by establishing regulatory and compensation schemes that penalize new entrants for failing to mirror monopoly networks. The Commission's goal of supporting competition would be better served by providing the essential regulatory certainty that would result from reaffirmation of the right of a carrier to compensation for the use of its network, the single point of interconnection rule, the tandem rate rule, and the ability of CLECs to provide innovative services, including virtual FX service, as part of a mix of legitimate and valuable customer services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Maria Nestoros, hereby certify that on this 5th day of November, 2001, a copy of the foregoing was filed on the Federal Communications Commission's Electronic Comment Filing System and the following parties were served in accordance with the Commission's rules:

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